SUPREME COURT OF THE UNITED STATES

MARTIN D. LAMBERT, GALLATIN COUNTY ATTORNEY *v.* SUSAN WICKLUND ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 96–858. Decided March 31, 1997

JUSTICE STEVENS, with whom JUSTICE GINSBURG and JUSTICE BREYER join, concurring in the judgment.

We assumed in *Ohio* v. *Akron Center for Reproductive Health,* 497 U. S. 502 (1990) (*Akron II*), that a young woman's demonstration that an abortion would be in her best interest was sufficient to meet the requirements of the Ohio statute's judicial bypass provision. In my view, that case requires us to make the same assumption here. Whether that is a necessary showing is a question we need not reach.

In *Akron II*, we upheld a statute authorizing a judicial bypass of a parental notice requirement on the understanding that Ohio Rev. Code Ann. §2151.85(C)(2) (1995) required the juvenile court to authorize the procedure whenever it determined that "the abortion is in the minor's best interest," *id.*, at 511. Given the fact that the relevant text of the Montana statute at issue in this case, Mont. Code Ann. §50–20–212(5)(b) (1995), is essentially identical to the Ohio provision, coupled with the fact that the Montana Attorney General has advised us that "the best interests standard in §50–20–212(5)(b) [is] either identical to or substantively indistinguishable from the best interests" provision construed in *Akron II*, Pet. for Cert. 7, it is surely appropriate to assume that the Montana provision also requires the court to authorize the minor's consent whenever the abortion is in her best interests. So understood, the Montana statute is

plainly constitutional under our ruling in *Akron II*. Because the Court of Appeals erroneously construed the statute in a manner that caused that court to hold the statute unconstitutional, I agree with the majority that the judgment below should be reversed.*

While a showing that an abortion is in a young woman's best interest is therefore sufficient to satisfy the Montana judicial bypass provision as we understood an analogous statute in *Akron II*, I do not think the Court need address whether the Montana statute can be properly understood to make such a demonstration a necessary requirement. My colleagues suggest that the statute requires a minor "to show that abortion without notification is in her best interests," *ante*, at 6 (emphasis omitted). To the extent this language indicates that a young woman must demonstrate *both* that abortion is in her best interest *and* that notification is not, I think that question is best left for another day. I note, however, that the plain language of the statute makes passably clear that a showing that notification is not in the minor's best interest is alone sufficient. See Mont. Code Ann. §50–20–212(5)(b) (1995) ("[t]he court shall issue an order authorizing the petitioner to consent to an abortion without the notification of a parent . . . if the court finds, by clear and convincing evidence, that . . . the notification of a parent . . . is not in the best

*Our reading of the statute in *Akron II* appropriately recognized that the two inquiries at issue here—whether an abortion is in a young woman's best interest, and whether notifying a minor's parents of her desire to obtain an abortion is in her best interest—are sometimes linked. For example, if a judge finds after careful assessment of all the circumstances that the abortion a young woman seeks would be in her best interest, and determines that notifying her parents is both opposed by the young woman and would likely cause her to be deterred from pursuing the treatment decision that would serve her best, then parental notification is assuredly not in her best interest. Under such circumstances, the proper course for the trial judge would be to permit the abortion without notification.

interests of the petitioner").

Although I therefore do not agree with all of the Court's reasoning, I concur in the majority's view that the judgment of the Court of Appeals must be reversed.